Section III:

AMENDMENT UNDER 37 CFR §1.121 to the DRAWINGS

None other than that changes proposed in the previous reply by the Applicant.

Section IV:

AMENDMENT UNDER 37 CFR §1.121

REMARKS

Request for Telephone Interview

In the previous reply by applicant, a telephone interview was requested by applicant but was not granted or held with examiner.

Proposed Drawing Changes

In the previous reply by applicant and responsive to objections made in the Office Action of 10/05/2004, applicant proposed changes to Figures 3 and 4. The present Office Action of 04/20/2005 does not approve or disapprove these changes. Applicant requests clarification from the Examiner regarding the approval of these changes.

Rejections under 35 U.S.C. §103(a)

In the Office Action, the examiner has rejected claims 1 - 12 under 35 U.S.C. §103(a) as being unpatentable over a single reference, U.S. Patent Number 6,763,395 to Austin (hereinafter "Austin"). In the previous Office Action, claims 1 - 12 were rejected under 35 U.S.C. §102(e) over the same reference (Austin).

New Claims 13, 14 and 15 are added by the present amendment.

Applicant maintains the previous arguments regarding the proper interpretation of the teachings of Austin. Therefore, the arguments presented in applicant's reply of January 5, 2005, are incorporated herein.

In the present Office Action, it was stated that

> "Austin does not explicitly teach the use of an application server. However, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to incorporate the use of Austin's client enabled extensions and plug-ins into an application server as this would offer an alternative and **enhance Austin's system** to have the server-side, such as the Data Socket server, handle the processing and updating of protocols and plug-ins, thus allowing feer systems to need to be up to date and be updated, allowing plug-ins and extensions more likelihood to be registered." (pg. 3, line 18 - pg. 4 line 2, emphasis added)

Applicant respectfully traverses that it would have been obvious to one ordinarily skilled in the art to "enhance" Austin's system to implement server-side functionality instead of client-side functionality, besides that applicant does not agree that Austin's client-side functionality is the same as applicant's server-side functionality, as previously stated in the reply of January 5, 2005.

Clearly, the inventor, Paul F. Austin, of the cited patent is "ordinarily skilled in the art". He has a demonstrated record of invention, with eleven issued US patents, dating back as early as 1996 (approximately 5 years prior to the filing date of the applicant's patent application):

	Patents Issued Naming Paul F. Austin as an Inventor
6,763,395	System and method for connecting to and viewing live data using a standard user agent
6,751,653	Assembly of a graphical program for accessing data from a data source/target
6,643,691	Assembly of a graphical program for accessing data from a data source/target
6,542,166	System and method for editing a control
6,526,566	Graphical programming system and method including nodes for programmatically accessing data sources and targets
6,515,682	System and method for editing a control utilizing a preview window to view changes made to the control
6,370,569	Data socket system and method for accessing data sources using URLs
6,256,625	Video acquisition system including objects with dynamic communication capabilities

Patents Issued Naming Paul F. Austin as an Inventor (cont.)

5,974,257	Data acquisition system with collection of hardware information for identifying hardware constraints during program development
5,870,088	System and method for editing a control via direct graphical user interaction
5,504,917	Method and apparatus for providing picture generation and control features in a graphical data flow environment

Applicant submits that having at least 5 years relevant experience and 11 issued patents qualifies Mr. Austin as being ordinarily skilled in the art.

In the rationale for the rejection under 35 U.S.C. §103(a), it was reasoned that implementing Mr. Austin's client-side functionality in alternative form as server-side functionality would have been obvious in order to "enhance" Austin's invention, and a number of server-side advantages were stated.

However, this reasoning is improper for several reasons. First, as Mr. Austin is an ordinarily skilled person in the art, and as his patent is issued, it must be assumed that Mr. Austin met the requirement to disclose his "best mode", but there is no mention of the "enhanced" server-side alternative (and it's advantages) in the Austin disclosure. As such, to presume non-disclosed better alternative embodiments which were obvious to Mr. Austin is to presume Mr. Austin did not meet the "best mode" disclosure requirement, which is inconsistent with the legal treatment of issued US patents (e.g. the patent would have to undergo proper judicial invalidity analysis or USPTO re-examination to establish such a holding).

Second, it is improper to import the advantages of server-side implementation, which are not taught by Austin's disclosure, into his disclosure, presumably from applicant's disclosure, although it was not specified in the Office Action where the advantages were dislosed.

Third, as argued in applicant's reply of January 5, 2005, Austin teaches away from server-based implementations, which is not overridden by Austin's recognition or mention of HTTP servers in any way. For example, Austin clearly states:

> ... Advantageously, users may connect to a data source and view live data from the data source in a manner similar to connecting to a traditional web HTTP server and viewing a web page, **but without interacting with an HTTP server at any point**. (Austin's Abstract, emphasis added)

and, further:

> ... Advantageously, users may connect to a data source and view live data from the data source in a manner similar to connecting to a traditional web HTTP server and viewing a web page, **but without interacting with an HTTP server at any point.** ... (Col. 2 lines 63 - 67, emphasis added)

and:

> In step 308, the data viewer component 204 connects to the data source identified by the URL and retrieves data from the data source. As illustrated in FIG. 4, the viewer component 204 may connect to a data source 212 via a network 208 such as a LAN, WAN, the Internet, etc. The viewer component 204 may also connect to a data source 212 which is included in the same computer system that is running the user agent or is attached to the computer system via a mechanism other than a network, e.g. an attached instrument or device as described with reference to FIG. 2. In the preferred embodiment, the data viewer may connect or couple to the data source **without connecting to a web server and without utilizing any web server protocols**. (Col. 9 line 58 - col. 10 line 3, emphasis added)

additionally:

> Austin's Claim 12 (emphasis added):
> The method of claim 1, wherein said connecting to the measurement device specified by the URL **does not include connecting to a web server.**

and, further:

> Austin's Claim 64 (emphasis added):
> The method of claim 58, wherein the data viewer connects to the data source specified by the URL **without connecting to a web server**.

and, additionally:

> Austin's Claim 65 (emphasis added):
> The method of claim 58, wherein the data viewer connects to the data source specified by the URL **without utilizing standard web server protocols**.

Thus, Austin, the primary reference teaches away from the proposed combination, which renders the proposed combination non-obvious, as MPEP §2145 states:

> It is improper to combine references where the references teach away from their combination.

Applicant submits that Austin was communicating an undesirability of connecting to a server and using server protocols by so many explicit statements against such methods. Such desirability must be found in the cited art, not in the applicant's disclosure, as MPEP § 2143.01 states (emphasis found in original text):

> The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.

Therefore, there can be no obviousness under 35 U.S.C. 103(a) based upon Austin. For these reasons, and for the technical differences argued in the applicant's previous reply of January 5, 2005, applicant requests withdrawal of the rejections and allowance of the claims.

Respectfully,

Robert Frantz

Agent for Applicant(s)
Robert H. Frantz, Reg. No. 42,553
Tel: (405) 812-5613